STATE OF MICHIGAN

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

OFFICE OF FINANCIAL AND INSURANCE REGULATION

Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX

Petitioner

v **File No. 120617-001**

Aetna Life Insurance Company

Respondent

_____

Issued and entered
this 10TH day of October 2011
by R. Kevin Clinton
Commissioner

ORDER

I. PROCEDURAL BACKGROUND

On April 15, 2011, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* The Commissioner preliminarily reviewed the request and accepted it on April 22, 2011.

The Commissioner immediately notified Aetna Life Insurance Company (Aetna) of the external review and asked for the information it used to make its final adverse determination. The information was received on April 26, 2011.

The issue here may be resolved by an analysis of the Petitioner's health care contract. The Commissioner reviews contractual issues pursuant to MCL 550.1911(7). This matter does not require a medical opinion from an independent review organization.

II. FACTUAL BACKGROUND

The Petitioner has individual coverage under Aetna's *Advantage* comprehensive medical insurance policy (the certificate) underwritten by Aetna. His benefits are defined in the policy.

On October 14, 2010, the Petitioner received a flu shot at a pharmacy. Aetna denied coverage on the basis that his policy does not cover such a routine service.

Petitioner appealed the denial through Aetna's internal appeals process. Aetna upheld its original denial and issued a final adverse determination dated March 31, 2011.

III. ISSUE

Did Aetna correctly deny Petitioner's October 14, 2010, flu vaccination under the terms of the certificate?

IV. ANALYSIS

Petitioner's Argument

With his request for external review, the Petitioner included a letter dated April 13, 2011, in which he explained his position:

> On October 14, 2010 I went to a [pharmacy] . . . to pick up some items. At the store, they were offering flu shots. The pharmacist on duty took my Aetna insurance card to check if a shot was covered. He contacted Aetna and they indicated to him that the procedure was indeed covered. I therefore received the flu shot.
>
> Aetna has denied the claim. They say that while their records show that they were contacted at 19:16 on October 14, 2010 by [the pharmacy] regarding the benefit query, their records do not show what the response was.
>
> * * *
>
> The pharmacist on duty said that Aetna indicated it was covered. I believe him. I got the shot because my insurance company, Aetna, said it was a covered procedure.

Respondent's Argument

In its final adverse determination, Aetna advised the Petitioner that the flu shot claim was denied because "your plan does not cover this routine service."

Aetna provided an "Administrative Case Summary" dated April 26, 2011, which explained its rationale for denying coverage:

> The member received a flu vaccination from [a pharmacy] on October 14, 2010.
>
> - The vaccination was performed by a pharmacist.
> - A claim was received by Aetna . . . on February 3, 2011.
> - The claim was denied as the vaccination was not performed by or under the direction of a physician.
>
> * * *
>
> The member's policy does provide coverage for the flu vaccination; however it excludes coverage for any services not given by or under the supervision of a physician.
>
> **Denial Rationale:**
>
> The member's Aetna Individual Advantage summary plan description, under the section Covered Medical Expenses states: "Not covered as Preventive Health Expenses are charges incurred for the following . . . Services not given by a physician or under his or her direction." The member's claims were processed [correctly] and in accordance with his plan documents.

Aetna maintains that its denial of coverage was appropriate under the terms of his certificate.

Commissioner's Review

The Petitioner does not argue that the flu shot at the pharmacy was a covered benefit under the policy. Rather, he states that his pharmacist contacted Aetna and was told that the flu shot would be covered. The Petitioner indicates he then relied on that information to his detriment.

However, the Commissioner has no way of determining what was said in any telephone call between the pharmacist and Aetna. Resolving the question of what was said (or not said) during a telephone conversation cannot be the basis of a decision in this case because the Patient's Right to Independent Review Act (PRIRA) lacks the hearing procedures necessary to make findings of fact based on evidence such as oral statements. Under PRIRA, the Commissioner's role in this matter is limited to determining whether Aetna properly administered health care benefits under the terms and conditions of the policy and state law.

As Aetna acknowledges, the policy covers preventive health services like flu shots. However, the certificate (pp. 10-11) specifically excludes coverage of preventive health services not given by a physician or under a physician's direction:

> **Preventive Health Expenses**
>
> Although not incurred in connection with a disease or injury, Covered Medical Expenses include the following Preventive Health Expenses. Benefits are subject to a Calendar Year maximum shown in the Summary of Coverage. No deductible is applicable to Preferred Care.
>
> * * *
>
> *For Members Age 18 or Over*
>
> * * *
>
> Not covered as Preventive Health Expenses are charges incurred for the following:
>
> * * *
>
> **Services not given by a physician or under his or her direction . . .**

There is no dispute that the flu shot was not given by or under the direction of a physician. Therefore, the Commissioner finds that Aetna's denial of coverage for the October 14, 2010, flu shot was consistent with the terms of the policy.

V. ORDER

The Commissioner upholds Aetna Life Insurance Company's March 31, 2011, final adverse determination. Aetna is not responsible for coverage of Petitioner's flu shot.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than 60 days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.